

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Agilent Technologies, Inc.,

NO. C 04-05385 JW

Plaintiffs,

OPENING JURY INSTRUCTIONS

v.

Elan Microelectronics Corporation,

Defendant.

DUTY OF JURY

Ladies and gentlemen: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. At the end of the trial, I will give you more instructions. During various points in the trial, when I find it appropriate, I will give you additional instructions. All of the instructions which I give to you are important. You must follow all of them.

In every legal dispute, there are two kinds of questions. The first kind of questions are questions of fact. For example, in many lawsuits there is a dispute between the parties over whether or not a particular event actually took place, and if it did take place whether or not it caused economic or other types of harm, and if so how much harm was caused. Under our system, a jury is empaneled to listen to the evidence and based on that evidence, the jury decides whether or not the disputed event took place or not and the amount of damages, if any which should be awarded.

1 As jurors in this case, your first duty is to listen to the evidence and make a
2 decision about what happened and if the plaintiffs suffered damages and if so, how
3 much to award. There might be instances when what the plaintiffs claim took place
4 will be different from what the defendants claim took place. You must listen to the
5 evidence and based on that evidence make your decision about what took place. In
6 other words, you must decide the facts of the case. You, and you alone, are the judges
7 of the facts.

8 The second kind of questions involved in legal disputes, are called questions of
9 law. An example of a question of law is: "What must the plaintiff prove in order to be
10 entitled to a verdict in favor of the plaintiff?" In our legal system, the judge is
11 responsible for deciding questions of law. In what we call "jury instruction" I tell you
12 the law which applies to this case. The statements I am making to you before you
13 begin to receive evidence are jury instructions.

14 The final step in the process is called the verdict. Based on your decision on
15 the facts and applying the law which I will give to you, you will be asked to decide in
16 favor of the plaintiffs or the defendants. Therefore, you will hear the evidence,
17 decide what the facts are, and then apply those facts to the law which I will give to
18 you. That is how you will reach your verdict. In doing so you must follow that law
19 whether you agree with it or not.

20 The evidence will consist of the testimony of witnesses, documents, and other
21 things received into evidence as exhibits and any facts on which the lawyers agree or
22 which I instruct you to accept.

23 **WHAT A PATENT IS AND HOW ONE IS OBTAINED**

24 As you learned during the jury selection process, this is a civil case involving a
25 dispute relating to a United States patent. I am now going to have you view a short
26 video about our patent system. During the video, the narrator will mention a sample
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1 patent. You will not have a copy of the sample patent, but an image of it will be
2 shown during the video.

3 **THE PARTIES, THE PATENT AT ISSUE AND**
4 **SUMMARY OF CONTENTIONS**

5 In this case, the Plaintiffs are Avago Technologies General IP PTE Ltd. and
6 Avago Technologies ECBU IP PTE Ltd., who are the patent holders. For
7 convenience, these entities will be collectively referred to as “Avago.” The Defendant
8 is Elan Microelectronics Corporation, who is the alleged infringer. For convenience,
9 this entity will be referred to as “Elan.”

10 The case involves a United States patent obtained by various inventors who
11 assigned the rights to the patent to Agilent Technology. Agilent Technology has
12 transferred its entire right, title and interest in the patent at issue to Avago. The patent
13 involved in this case is United States Patent Number 6,433,780. For convenience, the
14 parties and I will often refer to this patent as the ‘780 Patent, being the last three
15 numbers of its patent number. The ‘780 Patent claims as an invention a “Seeing Eye
16 Mouse for a Computer System.” In the “Summary of the Invention” the inventors
17 disclose that the invention is an “optical” mouse, which “detects motion by directly
18 imaging as an array of pixels the various particular spatial features of a work surface
19 below the mouse.”

20 Avago filed suit in this court seeking money damages from Elan for allegedly
21 infringing the ‘780 Patent by making, importing, and selling products that Avago
22 argues are covered by Claim 4 of the ‘780 Patent. Avago also alleges that Elan has
23 actively induced infringement of Claim 4 by others and contributed to the
24 infringement of Claim 4 by others.

25 Elan denies that it directly or indirectly infringes or has it induced other to
26 infringe Claim 4 of the ‘780 Patent. Elan also alleges that Claim 4 is invalid because
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1 it is anticipated by other patents, it is obvious, it lacks enablement and a written
2 description. I will give you further instructions as to these defenses to infringement.

3 Your job will be to decide whether Claim 4 of the '780 Patent has been
4 infringed and whether the claim is invalid. It is my job as judge to determine the
5 meaning of any claim language that needs interpretation. You must accept the
6 meanings I give you and use them when you decide whether any claim of the patent
7 has been infringed and whether any claim is invalid.

8 **STANDARD OF PROOF**

9 In a lawsuit such as this, the law provides that a party is entitled to a verdict in
10 its favor only if that party presents a sufficient amount of evidence under two
11 standards of proof. We call this the burden of proof. The two standards of proof that
12 you will apply to the evidence will depend on the issue you are deciding. On some
13 issues, you must decide whether something is more likely true than not. This is called
14 "preponderance of evidence." During the trial, you will hear evidence from both
15 sides. If you were to put the evidence on opposite sides of the scales, the party with
16 the burden to prove a matter by a preponderance of the evidence would have to make
17 the scales tip slightly on that party's side. If that party fails to meet this burden, the
18 verdict must be for the opposing party.

19 On other issues you must use a higher standard and decide whether it is highly
20 probable that something is true. This is called "clear and convincing evidence." If
21 you were to put the evidence on opposite sides of the scales, the party with the burden
22 of prove a matter by clear and convincing evidence would have to make the scales tip
23 more than slightly on that party's side.

24 Some of you might have heard the term "proof beyond a reasonable doubt."
25 That is a stricter standard; i.e., it only applies to a criminal case and it requires more
26 proof than a preponderance of the evidence. The reasonable doubt standard does not
27 apply to a civil case and you should therefore put it out of your minds.

1 Avago will present its evidence on its contention that Claim 4 of the '780 Patent
2 has been and continues to be infringed by Elan and that the infringement has been and
3 continues to be willful. To prove infringement of any claim, Avago must persuade
4 you that it is more likely than not that Elan has infringed that claim. To persuade you
5 that any infringement was willful, Avago must prove that it is highly probable that the
6 infringement was willful.

7 Elan will present evidence to support its claim that Claim 4 of the '780 Patent is
8 invalid. To prove invalidity of Claim 4, Elan must persuade you that it is highly
9 probable that the claim is invalid.

10 During the presentation of the evidence, the attorneys will be allowed brief
11 opportunities to explain what they believe the evidence has shown or what they
12 believe upcoming evidence will show. Such comments are not evidence and are being
13 allowed solely for the purpose of helping you understand the evidence.

14 Because the evidence is introduced piecemeal, you need to keep an open mind
15 as the evidence comes in and wait for all the evidence before you make any decisions.
16 In other words, you should keep an open mind throughout the entire trial.

17 **WHAT IS EVIDENCE**

18 The evidence from which you are to decide what the facts are consist of are (1)
19 the sworn testimony of witnesses, both on direct and cross-examination, regardless of
20 who called the witness; (2) the exhibits which have been received into evidence; and
21 (3) any facts to which all the lawyers agree or stipulate.

22 **WHAT IS NOT EVIDENCE**

23 The following things are *not* evidence, and you must not consider them as
24 evidence in deciding the facts of this case:

- 25 1. Statements and arguments of the attorneys.
- 26 2. Questions and objections of the attorneys.
- 27 3. Testimony that I instruct you to disregard.

- 1 4. Anything you may have seen or heard when the court
2 is not in session even if what you see or hear is done
3 or said by one of the parties or by one of the
4 witnesses.

5 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

6 Evidence may be direct or circumstantial. Direct evidence is testimony by a
7 witness about what that witness personally saw or heard or did. Circumstantial
8 evidence is indirect evidence, that is, it is proof of one or more facts from which one
9 can find another fact. For example, if the question of fact in a given case is whether or
10 not Johnny ate the cherry pie, testimony by a witness that he saw Johnny put the pie in
11 his mouth and eat it would be direct evidence of this fact. However, if the question of
12 fact in another case was whether Jane ate the cherry pie and in that case no one saw
13 her eat it, but a witness testifies that he walked into the kitchen and saw Jane sitting at
14 the table with the empty pie tin in her hands and cherry pie on her face, this would
15 only be direct evidence that she was in the kitchen and that she had pie on her face,
16 but it would be circumstantial evidence from which a person could find that Jane ate
17 the pie. However, there could be other circumstances which would explain why she
18 had the tin in her hands and pie on her face.

19 You must listen to all the facts and may draw reasonable conclusions from
20 those facts. Facts may be proved by either direct or circumstantial evidence; you are
21 to consider both types of evidence. The law permits you to give equal weight to both,
22 but it is for you to decide how much weight to give to any evidence.

23 **RULING ON OBJECTIONS**

24 There are rules of evidence which control what can be received into evidence.
25 When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the
26 other side thinks that it is not permitted by the rules of evidence, that lawyer may
27 object. If I overrule the objection, the question may be answered or the exhibit
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1 received. If I sustain the objection, the question cannot be answered, and the exhibit
2 cannot be received. Whenever I sustain an objection to a question, you must ignore
3 the question and must not guess what the answer would have been.

4 Sometimes I may order that evidence be stricken from the record and that you
5 disregard or ignore the evidence. That means that when you are deciding the case,
6 you must not consider the evidence which I told you to disregard.

7 **CREDIBILITY OF WITNESSES**

8 In deciding the facts of this case, you may have to decide which witnesses to
9 believe and which witnesses not to believe. You may believe everything a witness
10 says or only part of it or none of it.

11 In deciding what to believe, you may consider a number of factors, including
12 the following:

- 13 (1) Is the witness able to see or hear or know the things the witness testified
14 to?
- 15 (2) What is the quality of the witness' memory?
- 16 (3) What is the witness' manner while testifying?
- 17 (4) Does the witness have an interest in the outcome of the case or any
18 motive, bias, or prejudice?
- 19 (5) Is the testimony of the witness contradicted by anything the witness said
20 or wrote before trial or by other evidence?
- 21 (6) How reasonable is the witness' testimony when considered in the light of
22 other evidence which you believe?

23 **TAKING NOTES**

24 If you wish, you may take notes to help you remember what witnesses say. If
25 you do take notes, please keep them to yourself until you and your fellow jurors go to
26 the jury room to decide the case. And do not let note taking distract you so that you
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1 do not hear other answers by witnesses. When you leave at night, your notes should
2 be left in the jury room.

3 If you do not take notes, you should rely upon your own memory of what was
4 said and not be overly influenced by the notes of other jurors.

5 If you need to speak with me about anything, simply use your note pads to give
6 a note to the clerk of court, the court reporter or to me.

7 You may also use your notes to let us know if you are having difficulty hearing
8 or understanding a particular part of the case. It is the policy of the Court not to
9 permit jurors to write questions for the witnesses. However, if there is some aspect of
10 the case which you find confusing, please write a note to me and I will bring it to the
11 attention of the attorneys.

12 Ordinarily we will take a break in the middle of our session. However, if any
13 one of you should need a break before the scheduled time, simply raise your hand to
14 get my attention and ask for a short recess and we will take one. Feel free to stand if
15 you need a stretch. Also, feel free at any time to go over to the water cooler here in
16 the courtroom.

17 CONDUCT OF THE JURY

18 I will now say a few words about your conduct as jurors.

19 First, do not talk to each other or with anyone else about this case or about
20 anyone who has anything to do with it until the end of the case when you go to the
21 jury room to decide on your verdict;

22 "Anyone else" includes members of your family and your friends. You may tell
23 them that you are a juror, but don't tell them anything about the case until after you
24 have been discharged by me;

25 "Talking" also includes sending e-mails, posting on message boards or social
26 networking sites (such as Facebook or MySpace), blogging, instant or texting
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1 messaging, sending messages on Twitter, or making any other form of written
2 communication, whether public or private.

3 Second, do not let anyone talk to you about the case or about anyone who has
4 anything to do with it. If someone should try to talk to you, please report it to me
5 immediately;

6 Third, do not read any news articles about the case or listen to any radio or
7 television reports about the case;

8 Fourth, do not do any research, such as consulting dictionaries or other
9 reference materials, or performing Internet searches (whether on your computer or cell
10 phone), and do not make any investigation about the case on your own;

11 Fifth, if you need to communicate with me simply give a signed note to Ms.
12 Garcia, our Courtroom Deputy Clerk, or to our Court Reporter or to me.; and

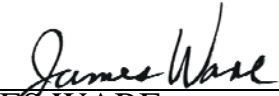
13 Sixth, do not make up your mind about what the verdict should be until after
14 you have gone to the jury room to decide the case and you and your fellow jurors have
15 discussed the evidence. Keep an open mind until then.

16 **OUTLINE OF TRIAL**

17 I have ordered the parties to schedule any meeting with me at times other than
18 those reserved for trial. Sometimes it might be necessary to meet during the times
19 reserved for trial, but if so, I will be doing my best to ensure that the purpose of the
20 meeting is to advance the goal of prompt and efficient proceedings.

21 The trial will now begin. First, each side may make an opening statement. An
22 opening statement is not evidence. It is simply an outline to help you understand what
23 that party expects the evidence will show. A party is not required to make an opening
24 statement.

25
26 Dated: April 15, 2009



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: April 15, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy